

In re) Fair Hearing No. 15,572
)
Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her application for Food Stamps. The issue is whether the petitioner is a "qualified alien" as defined in the pertinent regulations. The following facts are not in dispute.

1. The petitioner is a citizen of Japan who first came to the United States as a visitor about 3 and 1/2 years ago.
2. She later returned as a college student, was married in the United States, and had two children. She has never worked in the United States.
3. The petitioner has applied for a "green card" but has been told by the INS that this process will take about a year.
4. The petitioner applied for Food Stamps but was denied because the Department determined that she was ineligible to be a member of her family's Food Stamp household. The income of the petitioner's husband is in excess of the maximum for a household of three persons. If the petitioner was included in the household (making it a household of four persons) the family would qualify.

5. At the hearing the petitioner's husband was given a copy of the regulations (cited below) defining "qualified alien" status under Food Stamps. The petitioner does not allege that she meets any of those criteria.

ORDER

The Department's decision is affirmed.

REASONS

Participation in the Food Stamp program is restricted to persons described in Food Stamp Manual (FSM) § 273.4(a), which provides as follows:

State agencies shall allow participation in the program by any person, otherwise eligible, who is a resident of the United States and one of the following:

1. A United States citizen,
2. A qualified alien less than five years after the date:
 - i he or she was admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act (INA), or
 - ii he or she was granted asylum under section 208 or INA, or
 - iii his or her deportation was withheld under section 243(h) of the INA.
3. A qualified alien who entered the United States before August 22, 1996, and:
 - i was lawfully admitted to the United States for permanent residence under the INA; and
 - ii can be credited with 40 qualifying quarters of work, as defined in paragraph b.

4. A qualified alien who entered the United States on or after August 22, 1996, and:
 - i has been in the United States at least five years; and
 - ii was lawfully admitted to the United States for permanent residence under the INA; and
 - iii can be credited with 40 qualifying quarters of work, as defined in paragraph b.
5. A qualified alien lawfully residing in any state who is:
 - i a veteran, as defined in section 101 of title 39, United States Code, with a discharge characterized as an honorable discharge and not on account of alienage; or
 - ii on active duty, other than active duty for training in the Armed Forces of the United States; or
 - iii the spouse or unmarried dependent child of an individual described in (i) or (ii) above.

The term "qualified alien" is defined at 271.2.

F.S.M. § 271.2, referred to above, includes the following definition:

"Qualified Alien" means an alien who, at the time of application or receipt of food stamps, is (1) an alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA), (2) an alien who is granted asylum under section 208 of the INA, (3) a refugee who is admitted to the United States under section 207 of the INA, (4) an alien who is paroled into the United States under section 212(d)(5) of the INA for a period of at least one year, (5) an alien whose deportation is being withheld under section 243(h) of the INA, or (6) an alien who is granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980.

As noted above, the petitioner does not allege that she presently meets any of the criteria set forth in the above

regulations. Inasmuch as the Department's decision in this matter is in accord with its regulations the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

#